

REFERENCE TITLE: **underground storage tanks; energy act**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2425

Introduced by
Representatives Barnes, Garcia M: Ableser, Anderson, McGuire, Reagan,
Robson, Tobin, Ulmer

AN ACT

AMENDING SECTIONS 49-1001, 49-1002, 49-1003, 49-1009, 49-1013 AND 49-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1023; AMENDING SECTIONS 49-1031, 49-1081 AND 49-1082, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1083; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-1001, Arizona Revised Statutes, is amended to
3 read:

4 ~~49-1001.~~ Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Being used" means not having been taken out of operation.

7 2. "Closure" means the removal of an underground storage tank from
8 operation.

9 3. "Corrective actions" means those actions that are prescribed
10 pursuant to section 49-1005.

11 4. "Designated representative" means a person to whom an owner or an
12 operator, or both, assign in writing any right, title or interest which the
13 owner or operator, or both, may have in and to the proceeds of a
14 reimbursement for a corrective action made under article 3 of this chapter.

15 5. "ENERGY POLICY ACT" MEANS THE UNDERGROUND STORAGE TANK COMPLIANCE
16 ACT, TITLE XV, SUBTITLE B OF THE FEDERAL ENERGY POLICY ACT OF 2005
17 (P.L. 109-58; 119 STAT. 1092; 42 UNITED STATES CODE SECTION 6991), AS
18 AMENDED.

19 ~~5.~~ 6. "Fiduciary" means:

20 (a) A trust company or bank certified or authorized to engage in the
21 trust business pursuant to title 6, chapter 8, article 1.

22 (b) Any person appointed by a court or testamentary act to act as
23 personal representative, executor, trustee, administrator, guardian,
24 conservator, receiver or trustee in bankruptcy.

25 (c) Any person acting as a trustee of a deed of trust pursuant to
26 section 33-803.

27 (d) Any person acting as a trustee pursuant to title 14, chapter 7.

28 (e) Any person acting pursuant to and subject to fiduciary obligations
29 under the employee retirement income security act of 1974, ~~(29 United States~~
30 ~~Code sections 1101 through 1114).~~

31 ~~6.~~ 7. "Guarantor" means a person, other than an owner or operator,
32 who provides evidence of financial responsibility for an owner or operator
33 pursuant to this chapter.

34 ~~7.~~ 8. "Motor fuel" means petroleum or a petroleum based substance
35 that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel
36 or any grade of oxygenated gasoline typically used in the operation of a
37 motor engine.

38 9. "NEW COMPONENT" MEANS ANY UNDERGROUND PIPE OR COMBINATION OF PIPES
39 THAT CONTAINS AND CONVEYS A REGULATED SUBSTANCE BETWEEN A TANK AND A MOTOR
40 FUEL DISPENSER, INCLUDING ANY VALVE, ELBOW, CONNECTOR OR JOINT THAT IS ADDED
41 TO AN UNDERGROUND STORAGE TANK ON OR AFTER JANUARY 1, 2009 AND THAT WAS NOT
42 ORIGINALLY INCLUDED OR INSTALLED AS PART OF THE UNDERGROUND STORAGE TANK.

43 ~~8.~~ 10. "Occurrence" means an incident or accident, including
44 continuous or repeated exposure to conditions, which results in a release
45 from an underground storage tank.

1 ~~9-~~ 11. "Operator" means a person in control of, or having
 2 responsibility for, the day-to-day operation of an underground storage tank.
 3 ~~10-~~ 12. "Out of operation" means having been closed in accordance with
 4 all applicable fire codes and other statutory and regulatory requirements for
 5 closure in effect on the date that closure was accomplished.
 6 ~~11-~~ 13. "Person" means an individual, trust, firm, joint stock
 7 company, corporation, joint venture, partnership, association, consortium,
 8 state, municipality, interstate body, commission, political subdivision of a
 9 state and the United States government.
 10 ~~12-~~ 14. "Petroleum" means petroleum, including crude oil or any
 11 fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7
 12 pounds per square inch absolute, and petroleum based substances comprised of
 13 a complex blend of hydrocarbons derived from crude oil through processes of
 14 separation, conversion, upgrading and finishing, such as motor fuels,
 15 residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum
 16 solvents and used oils.
 17 ~~13-~~ 15. "Political subdivision" means a county, city, town or other
 18 taxing district other than the state that is authorized to take property by
 19 eminent domain.
 20 ~~14-~~ 16. "Regulated substance" means:
 21 (a) Petroleum.
 22 (b) A substance specified in the comprehensive environmental response,
 23 compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42
 24 United States Code section 9601(14)) but not including a substance regulated
 25 as a hazardous waste under the solid waste disposal act of 1984 (P.L. 98-616;
 26 98 Stat. 3221; 42 United States Code section 6921).
 27 ~~15-~~ 17. "Release" means a spill, leak, emission, discharge, escape,
 28 leach or disposal of a regulated substance from an underground storage tank
 29 into groundwater, surface water or soils.
 30 ~~16-~~ 18. "Suspected release" means any of the following:
 31 (a) The discovery by owners and operators or others of released
 32 regulated substances at the underground storage tank site or in the
 33 surrounding area.
 34 (b) Erratic behavior of regulated substance dispensing equipment, the
 35 sudden loss of a regulated substance from an underground storage tank, an
 36 unexplained presence of water in the underground storage tank or other
 37 extraordinary operating conditions that could reasonably be associated with a
 38 release from an underground storage tank and that are observed by owners and
 39 operators, unless system equipment is found to be defective but not leaking
 40 and is repaired or replaced immediately.
 41 (c) That the monitoring results from a release detection method
 42 required under 40 Code of Federal Regulations sections 280.41 and 280.42,
 43 this chapter or rules adopted pursuant to this chapter indicate that a
 44 release may have occurred unless either of the following occurs:

1 (i) The monitoring device is found to be defective and is immediately
2 repaired, recalibrated or replaced and additional monitoring data do not
3 confirm the initial result.

4 (ii) In the case of inventory control, a second month of inventory
5 reconciliation data does not confirm the initial result.

6 ~~17.~~ 19. "Tank" means a stationary device constructed of wood,
7 concrete, steel, plastic or other nonearthen materials and used to contain
8 regulated substances.

9 20. "UNDER-DISPENSER CONTAINMENT" MEANS A SECONDARY CONTAINMENT DEVICE
10 THAT IS BENEATH A MOTOR FUEL DISPENSER, THAT IS CONNECTED TO THE UNDERGROUND
11 STORAGE TANK AND THAT IS DESIGNED TO BE LIQUID TIGHT.

12 ~~18.~~ 21. "Underground storage tank" means a tank or combination of
13 tanks and underground pipes and impact valves connected to tanks being used
14 or having been used to contain regulated substances and which has at least
15 ten per cent of the total volume of the tank and underground portions of
16 pipes connected to the tank underground. Underground storage tank does not
17 mean any of the following:

18 (a) A farm or residential tank of one thousand one hundred gallons or
19 less capacity used for storing motor fuel for noncommercial purposes.

20 (b) A tank used for storing heating oil for consumptive use on the
21 premises where stored.

22 (c) A septic tank.

23 (d) A pipeline facility, including gathering lines, regulated under
24 either:

25 (i) The natural gas pipeline safety act of 1968 (49 United States Code
26 sections 1671 through 1686).

27 (ii) The hazardous liquid pipeline safety act of 1979 (49 United
28 States Code section 2001).

29 (e) An intrastate pipeline facility regulated under a state law
30 comparable to the provisions of law referred to in subdivision (d), item (i)
31 or (ii).

32 (f) A surface impoundment, pit, pond or lagoon.

33 (g) A storm water or wastewater collection system.

34 (h) A flow-through process tank.

35 (i) A liquid trap or associated gathering lines directly related to
36 oil or gas production and gathering operations.

37 (j) A storage tank situated in an underground area, such as a
38 basement, cellar, mine working, drift, shaft or tunnel, if the storage tank
39 is situated on or above the surface of the floor.

40 (k) Pipes connected to any of the structures described in subdivisions
41 (a) through (j).

1 Sec. 2. Section 49-1002, Arizona Revised Statutes, is amended to read:
2 49-1002. Notification requirements; exemptions

3 A. Except as otherwise provided in this section, each owner of an
4 underground storage tank shall notify the department in writing and shall
5 specify the tank's age, size, type, location and use.

6 B. For an underground storage tank that was taken out of operation on
7 or before January 1, 1974, regardless of whether the tank was removed from
8 the ground, the owner is exempt from giving notice.

9 C. For an underground storage tank that was taken out of operation
10 after January 1, 1974 but before November 8, 1984 and that was removed from
11 the ground, the owner is exempt from giving notice.

12 D. For an underground storage tank that was taken out of operation
13 after January 1, 1974 but before November 8, 1984 and that was not removed
14 from the ground, the owner shall specify the type and quantity of the
15 substances that were stored in the tank immediately before it was taken out
16 of operation. These requirements are in addition to the requirements for
17 notice prescribed in subsection A.

18 E. For an underground storage tank that was taken out of operation
19 after November 8, 1984 but before December 22, 1988 the director may require
20 the owner to make reasonable efforts to specify the age, size, location and
21 use of the tank, the type and quantity of the substances that were stored in
22 the tank immediately before it was taken out of operation and the date of its
23 removal from operation.

24 F. An owner who brings an underground storage tank into operation
25 shall meet the notification requirements of this section within thirty days
26 after the tank is brought into operation. AN OWNER WHO BRINGS A NEW
27 COMPONENT OR UNDER-DISPENSER CONTAINMENT INTO OPERATION ON OR AFTER JANUARY
28 1, 2009 SHALL MEET THE NOTIFICATION REQUIREMENTS OF THIS SECTION WITHIN
29 THIRTY DAYS AFTER THE NEW COMPONENT OR UNDER-DISPENSER CONTAINMENT IS BROUGHT
30 INTO OPERATION.

31 G. A person who sells a tank for use as an underground storage tank
32 shall notify the purchaser of the notice requirements of subsection F.

33 H. The notices required by this section shall be made on forms
34 prescribed by the department.

35 Sec. 3. Section 49-1003, Arizona Revised Statutes, is amended to read:
36 49-1003. Detection of releases; record keeping requirements

37 A. Until the rules adopted pursuant to subsection C are in effect, the
38 owner and operator of an underground storage tank shall maintain a release
39 detection system that complies with the requirements of 40 Code of Federal
40 Regulations ~~parts~~ SECTIONS 280.40 through 280.44.

41 B. Until the rules adopted pursuant to subsection C are in effect, the
42 owner and operator of an underground storage tank shall maintain systematic
43 and complete records of release detection information that complies with the
44 requirements of 40 Code of Federal Regulations ~~part~~ SECTION 280.45.

1 C. The director shall adopt rules establishing release detection
2 requirements and release detection record keeping requirements. The rules
3 adopted pursuant to this subsection shall be consistent with and no more
4 stringent than the federal regulations in effect on the date on which the
5 rules are adopted.

6 Sec. 4. Section 49-1009, Arizona Revised Statutes, is amended to read:
7 49-1009. Tank performance standards

8 A. ~~No~~ A person ~~may~~ **SHALL NOT** install an underground storage tank
9 unless the **UNDERGROUND STORAGE** tank meets all of the following requirements:

10 1. **IT** is designed to prevent releases due to corrosion or structural
11 failure for the operational life of the tank.

12 2. **IT** is cathodically protected against corrosion, constructed of
13 noncorrosive material, steel clad with a noncorrosive material or designed in
14 a manner to prevent the release of a regulated substance.

15 3. The material used in the construction or lining of the tank is
16 compatible with the substance to be stored.

17 **B. BEGINNING JANUARY 1, 2009, A PERSON SHALL NOT INSTALL AN**
18 **UNDERGROUND STORAGE TANK UNLESS THE UNDERGROUND STORAGE TANK MEETS THE**
19 **SECONDARY CONTAINMENT AND RELEASE DETECTION REQUIREMENTS FOR HAZARDOUS**
20 **SUBSTANCE UNDERGROUND STORAGE TANK SYSTEMS IN 40 CODE OF FEDERAL REGULATIONS**
21 **SECTION 280.42 AND THE INTERSTITIAL MONITORING REQUIREMENTS IN 40 CODE OF**
22 **FEDERAL REGULATIONS SECTION 280.43, SUBSECTION G.**

23 **C. BEGINNING JANUARY 1, 2009, A PERSON SHALL NOT INSTALL A NEW**
24 **COMPONENT THAT IS TWENTY-FIVE PER CENT OR MORE OF THE TOTAL LINEAR FOOTAGE OF**
25 **ALL CONNECTED PIPING OF THE UNDERGROUND STORAGE TANK UNLESS ALL CONNECTED**
26 **PIPING OF THE UNDERGROUND STORAGE TANK THAT CONVEYS A REGULATED SUBSTANCE**
27 **UNDER PRESSURE IS BROUGHT INTO COMPLIANCE WITH THE SECONDARY CONTAINMENT AND**
28 **RELEASE DETECTION REQUIREMENTS FOR HAZARDOUS SUBSTANCE UNDERGROUND STORAGE**
29 **TANK SYSTEMS IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.42 AND THE**
30 **INTERSTITIAL MONITORING REQUIREMENTS IN 40 CODE OF FEDERAL REGULATIONS**
31 **SECTION 280.43, SUBSECTION G.**

32 **D. BEGINNING JANUARY 1, 2009, AN OWNER OR OPERATOR WHO INSTALLS OR**
33 **REPLACES A MOTOR FUEL DISPENSER THAT CONNECTS TO AN UNDERGROUND STORAGE TANK**
34 **SHALL INSTALL UNDER-DISPENSER CONTAINMENT. THE UNDER-DISPENSER CONTAINMENT**
35 **SHALL MEET THE RELEASE DETECTION REQUIREMENTS OF 40 CODE OF FEDERAL**
36 **REGULATIONS SECTION 280.42, SUBSECTION B, PARAGRAPH 1.**

37 ~~B.~~ **E.** The owner and operator of an underground storage tank shall use
38 an underground storage tank, **A NEW COMPONENT, UNDER-DISPENSER CONTAINMENT AND**
39 **ANY SECONDARY CONTAINMENT MATERIAL THAT IS** made of or lined with materials
40 that are compatible with the regulated substance stored in or dispensed from
41 the underground storage tank.

42 ~~C.~~ **F.** The director may adopt rules specifying design, construction,
43 installation, performance and compatibility standards for underground storage
44 tanks. The rules adopted pursuant to this subsection shall be consistent

1 with and no more stringent than federal regulations in effect on the date on
2 which the rules are adopted.

3 ~~D.~~ G. The director may require an owner and operator of an
4 underground storage tank to perform or cause to be performed a tank test to
5 determine compliance with the standards established pursuant to this section.

6 Sec. 5. Section 49-1013, Arizona Revised Statutes, is amended to read:

7 49-1013. Enforcement and penalties

8 A. If the director determines that a person is in violation of this
9 chapter or the rules adopted pursuant to this chapter the director may issue
10 an order requiring compliance within a reasonable time. A compliance order
11 becomes final thirty days after the order is served unless within thirty days
12 of service the person named on the order requests a hearing. A hearing shall
13 be conducted pursuant to title 41, chapter 6, article 10. A compliance order
14 that is the subject of a hearing as prescribed by this section becomes final
15 and subject to appeal on the decision of the director to uphold the
16 compliance order. Except as provided in section 41-1092.08, subsection H,
17 the director's final decision may be appealed by any party to the superior
18 court pursuant to title 12, chapter 7, article 6. A person becomes the
19 subject of an enforcement proceeding pursuant to this chapter when a
20 compliance order against that person becomes final.

21 B. IF THE DIRECTOR ISSUES A STOP USE ORDER PURSUANT TO SECTION
22 49-1023, THE OWNER OR OPERATOR MAY REQUEST A HEARING WITHIN THIRTY DAYS AFTER
23 THE ISSUANCE OF THE STOP USE ORDER. A HEARING SHALL BE CONDUCTED PURSUANT TO
24 TITLE 41, CHAPTER 6, ARTICLE 10. EXCEPT AS PROVIDED IN SECTION 41-1092.08,
25 SUBSECTION H, THE DIRECTOR'S FINAL DECISION MAY BE APPEALED BY THE OWNER OR
26 OPERATOR TO THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

27 ~~B.~~ C. If a person fails to comply with a final order under this
28 section within the time specified in the order, the person is subject to a
29 civil penalty of not to exceed twenty-five thousand dollars for each day of
30 continued noncompliance.

31 ~~C.~~ D. An owner who knowingly fails to notify or submits false
32 information pursuant to section 49-1002 is subject to a civil penalty of not
33 to exceed ten thousand dollars for each UNDERGROUND STORAGE tank for which
34 notification is not given or false information is submitted.

35 ~~D.~~ E. An owner or operator of an underground storage tank who fails
36 to comply with any of the requirements or standards of this chapter OR WHO
37 FAILS TO COMPLY WITH A STOP USE ORDER is subject to a civil penalty of not to
38 exceed ten thousand dollars for each UNDERGROUND STORAGE tank for each day of
39 violation.

40 F. A PRODUCT DELIVERER AS DEFINED IN SECTION 49-1023 WHO FAILS TO
41 COMPLY WITH THE REQUIREMENTS OF SECTION 49-1023, SUBSECTION A IS SUBJECT TO A
42 CIVIL PENALTY OF NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH UNDERGROUND
43 STORAGE TANK FOR EACH VIOLATION.

44 ~~E.~~ G. The penalties provided for in this section shall not be
45 cumulated with any penalties sought and obtained by the department or the

1 United States pursuant to title VI of the hazardous and solid waste
2 amendments of 1984 (P.L. 98-616; 98 Stat. 3221).

3 ~~F.~~ H. The director may file an action in the superior court to
4 enforce this chapter and to collect penalties for violations of this chapter.
5 The director may seek all appropriate relief including temporary and
6 permanent injunctions.

7 ~~G.~~ I. All monies collected under the penalty provisions of this
8 section shall be deposited in the state general fund.

9 Sec. 6. Section 49-1021, Arizona Revised Statutes, is amended to read:

10 49-1021. Applicability

11 Until rules adopted pursuant to this chapter are in effect, this
12 chapter shall apply only to the extent described by 40 code of federal
13 regulations ~~part~~ SECTION 280.10 AND THE ENERGY POLICY ACT. Rules adopted
14 pursuant to this chapter shall apply only to underground storage tanks not
15 excluded or deferred by the federal regulations in effect on the date on
16 which the rules are adopted.

17 Sec. 7. Title 49, chapter 6, article 1, Arizona Revised Statutes, is
18 amended by adding section 49-1023, to read:

19 49-1023. Delivery prohibition; stop use tag; definitions

20 A. BEGINNING JANUARY 1, 2009, A PRODUCT DELIVERER SHALL NOT DELIVER,
21 DEPOSIT OR PLACE A REGULATED SUBSTANCE INTO AN UNDERGROUND STORAGE TANK THAT
22 HAS A STOP USE TAG FROM THE DIRECTOR AFFIXED TO A FILL PIPE OF THE
23 UNDERGROUND STORAGE TANK PURSUANT TO SUBSECTION B OF THIS SECTION.

24 B. THE DIRECTOR MAY ISSUE A STOP USE ORDER TO THE OWNER AND OPERATOR
25 OF THE UNDERGROUND STORAGE TANK AND AFFIX A STOP USE TAG THAT IS EASILY
26 VISIBLE TO THE PRODUCT DELIVERER ON ALL FILL PIPES OF THE UNDERGROUND STORAGE
27 TANK TO STOP OPERATION OF THE UNDERGROUND STORAGE TANK IF BOTH OF THE
28 FOLLOWING EXIST:

29 1. THE DIRECTOR HAS DETERMINED THAT THE UNDERGROUND STORAGE TANK IS IN
30 VIOLATION OF SECTION 49-1003 OR 49-1009 OR THE RULES ADOPTED PURSUANT TO
31 THOSE SECTIONS, AS APPLICABLE.

32 2. THE CONTINUED OPERATION OF THE UNDERGROUND STORAGE TANK MAY RESULT
33 IN A CONTINUED RELEASE OR NEW RELEASE FROM THE UNDERGROUND STORAGE TANK.

34 C. A STOP USE ORDER BECOMES EFFECTIVE IMMEDIATELY ON ISSUANCE AND
35 SUSPENDS USE OF THE UNDERGROUND STORAGE TANK.

36 D. THE OWNER AND OPERATOR OF AN UNDERGROUND STORAGE TANK THAT HAS
37 RECEIVED A STOP USE TAG PURSUANT TO SUBSECTION B OF THIS SECTION SHALL ENSURE
38 THAT NO PERSON REMOVES OR TAMPERS WITH THE STOP USE TAG UNTIL THE
39 REQUIREMENTS FOR RETURN OF THE UNDERGROUND STORAGE TANK TO OPERATION PURSUANT
40 TO SUBSECTION E OF THIS SECTION ARE MET, AND SHALL IMMEDIATELY EMPTY THE
41 UNDERGROUND STORAGE TANK AND COMPLY WITH THE REMAINING TEMPORARY CLOSURE
42 REQUIREMENTS ADOPTED UNDER SECTION 49-1008.

43 E. AN OWNER OR OPERATOR SHALL NOT BRING AN UNDERGROUND STORAGE TANK
44 THAT HAS RECEIVED A STOP USE TAG PURSUANT TO SUBSECTION B OF THIS SECTION
45 BACK INTO OPERATION UNTIL THE OWNER OR OPERATOR HAS DEMONSTRATED TO THE

DIRECTOR THAT THE UNDERGROUND STORAGE TANK MEETS THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE, AND THE OWNER OR OPERATOR HAS RECEIVED WRITTEN CONFIRMATION FROM THE DIRECTOR THAT THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE, HAVE BEEN MET.

F. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

G. FOR THE PURPOSES OF THIS SECTION:

1. "PRODUCT DELIVERER" MEANS A PERSON, INCLUDING AN OWNER, OPERATOR OR OIL COMPANY, OR A DISTRIBUTOR AS DEFINED IN SECTION 28-5601, A SUPPLIER AS DEFINED IN SECTION 28-5601, A PETROLEUM TRANSPORTATION COMPANY AND ANY OTHER ENTITY THAT DELIVERS, DEPOSITS OR PLACES A REGULATED SUBSTANCE INTO AN UNDERGROUND STORAGE TANK.

2. "STOP USE TAG" MEANS A TAG, DEVICE OR MECHANISM THAT IS PRESCRIBED BY THE DIRECTOR, THAT IS DESIGNED TO BE AFFIXED TO A FILL PIPE OF AN UNDERGROUND STORAGE TANK AND THAT CLEARLY STATES AND CONVEYS THAT IT IS UNLAWFUL TO DELIVER, DEPOSIT OR PLACE A REGULATED SUBSTANCE INTO THE UNDERGROUND STORAGE TANK TO WHICH IT IS AFFIXED.

Sec. 8. Section 49-1031, Arizona Revised Statutes, is amended to read:

49-1031. Imposition of tax

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance. On or before December 15 each year the director shall recommend to the legislature any revision to the tax rate necessary to maintain the assurance account of the underground storage tank revolving fund at the level prescribed by section 49-1051.

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the director that all regulated substances which are motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and which are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state, ~~its~~ OR agencies OF THE UNITED STATES OR THIS STATE or to any of the following substances placed in underground storage tanks:

1 1. Naphtha-type jet fuel or kerosene-type jet fuel.

2 2. Regulated substances as defined ~~pursuant to~~ IN section 49-1001,
3 paragraph ~~14~~ 16, subdivision (b), unless such regulated substances were
4 placed in an underground storage tank prior to July 1, 1997, and the owner or
5 operator of the underground storage tank has paid prior to July 1, 1997 all
6 taxes imposed by this article applicable to such regulated substances. If
7 the owner or operator has paid those taxes, ~~they~~ THE OWNER OR OPERATOR may
8 elect to continue to pay the tax imposed by this article regarding such
9 regulated substances.

10 D. The owner and operator of an underground storage tank regulated
11 under this chapter are jointly and severally liable for the tax, but the
12 owner and operator may agree between themselves and file a notarized
13 affidavit with the director designating either the owner or operator as
14 primarily responsible for the tax under this article.

15 E. Any person who purchases motor vehicle fuel as defined in section
16 28-101, aviation fuel as defined in section 28-101, or diesel as defined in
17 section 28-6001, subsection B for which the tax imposed by this section has
18 been paid and which fuel has been placed in a tank which is not subject to
19 the underground storage tank tax imposed by this section and from which no
20 further bulk distribution of the fuel will be made, may claim a refund of the
21 tax levied. Refunds shall be submitted on forms prescribed by the director
22 and shall be supported by substantiation for the amount of the tax paid.

23 F. Any person eligible to claim a refund of the tax imposed by this
24 section, including an assignee of a refund claim, may assign such claim to
25 the person from whom the fuel was purchased, and the assignee of the claim
26 may claim the refund allowed under subsection E of this section provided that
27 the assignor of the claim certifies in writing to the assignee, on forms
28 prescribed by the director, that the assignor relinquishes all interest in
29 the refund and shall not also claim a refund from the director.

30 G. If a refund claim is assigned to a person who is required to make
31 payments under title 28, chapter 16, article 6, the refund shall be taken
32 into account in the manner provided in section 28-6005.

33 H. The director shall adopt temporary and permanent rules for
34 administering the tax imposed by this article and specifying the forms of the
35 return and of the certification provided for in sections ~~28-6003 AND~~ 28-6004
36 ~~and 28-6005~~. The temporary and permanent rules shall prescribe the forms for
37 and manner in which refunds may be claimed and refund claims assigned
38 pursuant to subsection F of this section, shall specify the circumstances in
39 which fuel may be excluded from the quantity of fuel used to measure the tax
40 pursuant to title 28, chapter 16, article 6, and shall prescribe the forms
41 for and manner which the certification provided in title 28, chapter 16,
42 article 6 shall be made.

43 I. Title 41, chapter ~~6,~~ shall not apply to the temporary rules
44 adopted pursuant to this section. The temporary rules shall be filed with
45 the secretary of state and shall be effective for a period of one hundred

eighty days from the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days from the date the renewed temporary rules are filed with the secretary of state.

J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

Sec. 9. Section 49-1081, Arizona Revised Statutes, is amended to read:

49-1081. Definitions

In this article, unless the context otherwise requires:

1. "ATTENDED FACILITY" MEANS AN UNDERGROUND STORAGE TANK FACILITY AT WHICH IT IS THE USUAL AND CUSTOMARY PRACTICE FOR THE OWNER OR OPERATOR, OR ANY EMPLOYEE OF THE OWNER OR OPERATOR, TO BE PRESENT ON SITE DURING NORMAL HOURS OF OPERATION.

2. "CLASS A INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING PRIMARY MANAGEMENT RESPONSIBILITY OR DECISION-MAKING AUTHORITY FOR THE OPERATION, MAINTENANCE AND RECORD KEEPING OF AN UNDERGROUND STORAGE TANK FACILITY. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

3. "CLASS B INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING DAILY RESPONSIBILITY FOR THE OPERATION, MAINTENANCE AND RECORD KEEPING OF AN UNDERGROUND STORAGE TANK FACILITY. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

4. "CLASS C INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING DAILY RESPONSIBILITY FOR AN INITIAL RESPONSE TO AN ALARM OR OTHER INDICATION OF AN EMERGENCY CAUSED BY A RELEASE OR SUSPECTED RELEASE FROM AN UNDERGROUND STORAGE TANK. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

~~1.~~ 5. "Supervision" means the immediate, on-site control and direction by a person certified by the department in accordance with ~~this article~~ SECTION 49-1082 and the rules adopted pursuant to ~~this article~~, SECTION 49-1082 of a person who is performing tank service and who is not certified in accordance with ~~this article~~, SECTION 49-1082 and the rules adopted pursuant to ~~this article~~, SECTION 49-1082.

~~2.~~ 6. "Tank service" means installation, retrofitting, tank tightness testing, closure, cathodic protection or interior tank lining of an underground storage tank or a part of an underground storage tank.

Sec. 10. Section 49-1082, Arizona Revised Statutes, is amended to read:

49-1082. Certification of underground storage tank service providers; rules; suspension or revocation of certification

A. Beginning from and after December 31, 1996, a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this ~~article~~ SECTION and the rules adopted pursuant to ~~this~~ article SECTION, or is supervised by a person certified in

1 accordance with this ~~article~~ SECTION and the rules adopted pursuant to this
2 ~~article~~ SECTION.

3 B. The department shall not certify a person as a tank service
4 provider until that person completes the requirements of this ~~article~~ SECTION
5 and the rules adopted pursuant to this ~~article~~ SECTION. In accordance with
6 subsection D, the supervisor is responsible for all persons performing work
7 under the DIRECTION OF THE supervisor and any violations of this ~~article~~
8 SECTION or rules adopted pursuant to this ~~article~~ SECTION are attributable to
9 the supervisor.

10 C. By January 1, 1997, the department shall adopt rules for the
11 establishment and maintenance of an underground storage tank service provider
12 certification program. The certification program shall include the submittal
13 and verification of information that the director determines is necessary to
14 ensure that the tank service provider possesses and maintains the essential
15 knowledge, skills and work history to perform the service effectively and in
16 a manner that protects human health and the environment. The department may
17 establish separate certification methods for each area of tank service as
18 it is defined, and may define the duration of the certification period, which
19 shall be at least one year.

20 D. The department, ~~upon~~ ON reasonable evidence, may suspend or revoke
21 the certification of any person who fails to maintain the standards
22 established pursuant to this ~~article~~ SECTION or who exhibits incompetence,
23 negligence or fraud in performing the certified activity or in other work
24 relating to the certified activity. A person whose certification is revoked
25 or suspended pursuant to this subsection may appeal the decision pursuant to
26 title 41, chapter 6, article 10.

27 Sec. 11. Title 49, chapter 6, article 5, Arizona Revised Statutes, is
28 amended by adding section 49-1083, to read:

29 49-1083. Designation; training; record keeping requirements;
30 rules

31 A. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR SHALL DESIGNATE A
32 CLASS A INDIVIDUAL WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND F OF
33 THIS SECTION WITHIN THIRTY DAYS OR ANOTHER PERIOD SPECIFIED BY THE DIRECTOR
34 AFTER BEING DESIGNATED BY THE OWNER OR OPERATOR.

35 B. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR MUST DESIGNATE A
36 CLASS B INDIVIDUAL WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND F OF
37 THIS SECTION WITHIN THIRTY DAYS OR ANOTHER PERIOD SPECIFIED BY THE DIRECTOR
38 AFTER BEING DESIGNATED BY THE OWNER OR OPERATOR.

39 C. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR MUST DESIGNATE ONE
40 OR MORE CLASS C INDIVIDUALS WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND
41 F OF THIS SECTION BEFORE ASSUMING THE ROLE OF A CLASS C INDIVIDUAL. FOR AN
42 ATTENDED FACILITY, A CLASS C INDIVIDUAL MUST BE ON SITE DURING THE USUAL AND
43 CUSTOMARY HOURS OF OPERATION.

44 D. THE CLASS A INDIVIDUAL AND CLASS B INDIVIDUAL SHALL BE RETRAINED IF
45 THE DIRECTOR DETERMINES THAT AN UNDERGROUND STORAGE TANK AT THE FACILITY IS

1 NOT EQUIPPED AND OPERATED IN ACCORDANCE WITH RELEASE DETECTION, CORROSION
2 PROTECTION, SPILL PREVENTION AND OVERFILL PROTECTION IN COMPLIANCE WITH
3 SECTIONS 49-1003, 49-1009 AND 49-1023 AND THE RULES ADOPTED UNDER THOSE
4 SECTIONS, AS APPLICABLE. DOCUMENTATION OF THE RETRAINING MUST BE MAINTAINED
5 IN ACCORDANCE WITH SUBSECTION G OF THIS SECTION.

6 E. THE DIRECTOR SHALL ESTABLISH THE DURATION FOR WHICH TRAINING IS
7 VALID AND THE DURATION SHALL NOT BE LESS THAN ONE YEAR OR MORE THAN THREE
8 YEARS.

9 F. THE TRAINING SHALL BE IN A FORMAT APPROVED BY THE DIRECTOR AND
10 SHALL INCLUDE THE FOLLOWING:

11 1. FOR A CLASS A INDIVIDUAL, THE REQUIREMENTS ASSOCIATED WITH
12 NOTIFICATION UNDER SECTION 49-1002, RELEASE DETECTION UNDER SECTION 49-1003,
13 REPORTING REQUIREMENTS UNDER SECTION 49-1004, FINANCIAL RESPONSIBILITY UNDER
14 SECTION 49-1006, CLOSURE UNDER SECTION 49-1008, UNDERGROUND STORAGE TANK
15 PERFORMANCE UNDER SECTION 49-1009, DELIVERY PROHIBITION UNDER SECTION 49-1023
16 AND THIS SECTION AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS APPLICABLE.

17 2. FOR A CLASS B INDIVIDUAL, THE REQUIREMENTS ASSOCIATED WITH RELEASE
18 DETECTION UNDER SECTION 49-1003, REPORTING REQUIREMENTS UNDER SECTION
19 49-1004, UNDERGROUND STORAGE TANK PERFORMANCE UNDER SECTION 49-1009, DELIVERY
20 PROHIBITION UNDER SECTION 49-1023, THE TRAINING REQUIREMENTS FOR A CLASS C
21 INDIVIDUAL UNDER PARAGRAPH 3 AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS
22 APPLICABLE.

23 3. FOR A CLASS C INDIVIDUAL, INITIAL RESPONSE PROCEDURES TO AN ALARM
24 OR OTHER INDICATION OF AN EMERGENCY CAUSED BY A RELEASE OR SUSPECTED RELEASE
25 FROM AN UNDERGROUND STORAGE TANK, INCLUDING PROCEDURES FOR CONTACTING A CLASS
26 A OR CLASS B INDIVIDUAL AND ANY EMERGENCY RESPONDER.

27 G. AN OWNER AND OPERATOR SHALL DOCUMENT THAT THE TRAINING REQUIREMENTS
28 OF THIS SECTION HAVE BEEN MET FOR EACH CLASS A, CLASS B OR CLASS C
29 INDIVIDUAL. TRAINING SHALL BE DOCUMENTED ON A FORM PRESCRIBED BY THE
30 DIRECTOR. TRAINING RECORDS SHALL BE MAINTAINED FOR A PERIOD OF NOT LESS THAN
31 THREE YEARS AFTER THE TRAINING IS COMPLETED AND SHALL BE AVAILABLE FOR
32 INSPECTION BY THE DIRECTOR ON REQUEST.

33 H. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.